

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA**

DIANA MEY,)
 Individually and on)
 behalf of a proposed class,)
)
 Plaintiff,)
)
 v.)
)
 ALL ACCESS TELECOM, INC.,)
 BANDWIDTH INC.,)
 CENTURYLINK COMMUNICATIONS.,)
 LLC, d/b/a Lumen Technologies,)
 LEVEL 3 COMMUNICATIONS, LLC,)
 d/b/a Lumen Technologies,)
 INTELIGENT, INC.,)
 AFFINITY NETWORK)
 INCORPORATED, and)
 TELIAX, INC.)
)
 Defendants.)

Case No.: 5:19-CV-00237-JPB

**DEFENDANTS CENTURYLINK COMMUNICATIONS, LLC AND LEVEL 3
COMMUNICATIONS, LLC’S MOTION TO DISMISS
PLAINTIFF’S THIRD AMENDED COMPLAINT**

Defendants CenturyLink Communications, LLC and Level 3 Communications, LLC (the “Lumen Defendants”) respectfully move this Court to dismiss the Third Amended Complaint filed by Plaintiff Diana Mey (“Plaintiff”) under Federal Rule of Civil Procedure 12(b)(6).

As explained more fully in the Lumen Defendants’ Memorandum in Support of their Motion to Dismiss, Plaintiff’s claim against the Lumen Defendants should be dismissed under Federal Rule of Civil Procedure 12(b)(6) because Plaintiff has not alleged facts from which it can plausibly be inferred that an automated telephone dialing system (“ATDS”) was used for the calls allegedly implicating the Lumen Defendants. Plaintiff’s sole relevant factual allegations are that (1) the Lumen Defendants played a role in placing six calls from an “Unidentified Spoofer” over a four-month time span, (2) the phone number used to make those six calls had eleven digits, and

(3) Plaintiff heard a pause on some, but not all, of the six calls. At the same time, Plaintiff admits that she does not know who placed the calls at issue, let alone the technology he or she used to place the calls. Based only on these facts, Plaintiff then makes a series of implausible inferences, concluding that the Unidentified Spoofer must have employed a computerized system, and because “all” computerized systems have the capacity to be an ATDS, an ATDS must have been used here. But Plaintiff’s allegations are conclusory, unsupported by fact, and inconsistent with both basic federal pleading standards and the Supreme Court’s recent *Facebook v. Duguid* decision. Therefore, the claim against the Lumen Defendants should be dismissed.

WHEREFORE, the Lumen Defendants respectfully requests that the Court grant their motion, dismiss Plaintiff’s Third Amended Complaint against them with prejudice, and award the Lumen Defendants all other relief that the Court deems just and proper.

Dated: May 27, 2021

/s/ William J. Ihlenfeld, II
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Communications, LLC*

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CENTURYLINK COMMUNICATIONS.,)	
LLC, d/b/a Lumen Technologies,)	
LEVEL 3 COMMUNICATIONS, LLC,)	
d/b/a Lumen Technologies,)	
INTELIQUENT, INC.;)	
NOS COMMUNICATIONS, INC., and)	
TELIAX, INC.,)	
)	
Defendants.)	

CERTIFICATE OF SERVICE

I, William J. Ihlenfeld, II, certify that on May 27, 2021, I filed the foregoing DEFENDANTS CENTURYLINK COMMUNICATIONS, LLC AND LEVEL 3 COMMUNICATIONS, LLC'S MOTION TO DISMISS PLAINTIFF'S THIRD AMENDED COMPLAINT with the Clerk of Court for the United States District Court for the Northern District of West Virginia using the CM/ECF system, which will serve this document upon all counsel of record.

/s/ William J. Ihlenfeld, II

William J. Ihlenfeld, II